IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11530 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DY EXECUTIVE ENGINEER - Petitioner(s)
Versus
VANKAR ARKHIBEN NATHABHAI & 4 - Respondent(s)

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Appearance :
MR MANISH J PATEL for Petitioner
MR SHASHIKANT S GADE for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/07/2007

ORAL JUDGMENT

Shri Manish J. Patel, learned counsel for the petitioner; none for the respondents though name of Shri Shahsikant S. Gade is shown in the daily

board.

2. Learned Labour Court, Ahmedabad had passed a common award in relation to five workmen and had finally decided References No. 241, 252, 254, 255 and 257, all of 1987. The petitioner, being aggrieved by the said different awards has filed one common petition. It is not a case where five persons had jointly filed a dispute and the dispute was finally decided by one common award giving cause to the party who had chosen to file one common petition. When five disputes were filed, same were required to be challenged by five different petitions. Learned counsel for the petitioner submits that he be given some time to file separate petitions. I do not think that after lapse of 13 years, such liberty should be given to the petitioner. On being asked that which of the respondents would be selected by the petitioner to proceed with the petition, Shri Patel submitted that he would proceed with the case of respondent no.1.

3. It is the submission of the learned counsel for the petitioner that the learned Court below was

unjustified in holding that the workmen had worked for more than 240 days despite there being documentary evidence available on the records to show that the workmen could not complete 240 working days in 12 calendar months preceding the date of the illegal retrenchment.

4. The workmen appeared as witnesses and submitted that they had worked for more than 240 days. To controvert this, department had produced zerox copies of the Attendance Register under Exh.18 to prove that those persons did not work for 240 days, however, one Ramanbhai Gopalbhai, a witness examined by the present petitioner made a submission that there is a Circular of the State Government that whoever continuously works for 360 days would be entitled to a weekly off. In this case, the Court below has found that each of the workmen was getting a weekly off, on strength of the admission made by the witness of the respondent and the fact that the workman was getting a weekly off, the Court below came to the conclusion that each of the workmen had worked for more than 240 days in 12

calendar months preceding the date of the illegal retrenchment/termination. It was repeatedly submitted that the Court below should have relied upon the documentary evidence in comparison to the oral evidence and should have recorded a finding in favour of the establishment. In the considered opinion of this Court, jurisdiction to rely upon the documentary or oral evidence rests in the subordinate court. If the Court finds that the oral evidence must be given precedence over the documentary evidence, then, that again would be a question of appreciation of evidence. In a petition under Article 227 of the Constitution of India, it would not be possible for the High Court to reappreciate the evidence and record a finding different from what has been recorded by the subordinate Court.

5. The High Court would be entitled to interfere in the findings only if the findings are perverse. In the present case, there is some evidence available to support the findings and if that be so, the findings cannot be interfered with. I

find no reason to interfere. Apart from the technical error, even on the merits, I do not find any good reason to interfere in the matter. The petition is dismissed. Rule is discharged accordingly. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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